

FACTUAL HISTORY

On January 11, 2007 appellant, then a 53-year old program specialist, filed a traumatic injury claim alleging that, on that date, he sustained bleeding and swelling to his face and body as well as spinal pain and numbness when he was struck by a steel door and pinned against a steel cart. He did not stop working.

In a June 22, 2007 report, Dr. Ashna Parti, an osteopath and a Board-certified physiatrist, listed appellant's complaint of neck and low back pain. He noted examination findings and diagnosed cervical and lumbar spondylosis, myofascial pain syndrome and sacroiliitis. A January 7, 2008 report signed by a physician's assistant stated that appellant had tenderness along the right paraspinal musculature and diminished lateral flexion and rotation of the right side of the neck. Appellant denied any prior injuries. An addendum dated January 17, 2008 and signed by Dr. Robert Windsor, a Board-certified physiatrist, noted that appellant had a history of thoracic pain of possible anterior element etiology.

In a March 31, 2008 report, Dr. Arman Borhan, a Board-certified physiatrist, stated that appellant presented worsening cervical pain and noted tenderness to palpation along the cervical spine. He diagnosed cervical spondylosis, cervical facet arthritis post right C6-T2 radiofrequency ablations, myofascial pain syndrome and sacroiliitis. A subsequent report from Dr. Borhan noted appellant's status and diagnoses.

In a June 7, 2008 report, Dr. Vernon J. Hendrix III, a Board-certified diagnostic radiologist, advised that a magnetic resonance imaging (MRI) scan of appellant's lumbar region revealed degenerative changes at L3 through S1.

In a September 22, 2008 letter, the Office informed appellant of the evidence needed to establish his claim.²

Appellant provided a January 11, 2007 progress note from Dr. Alan Czarkowski, an osteopath specializing in occupational medicine, stating that appellant was struck in the face by a door at the loading dock on that day. Dr. Czarkowski examined appellant and noted tenderness of the upper lip and erythema, swelling and tenderness of the nose. He diagnosed a nose contusion.

By decision dated October 29, 2008, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that the January 11, 2007 incident caused a traumatic injury.

On October 28, 2009 appellant requested reconsideration as he found new evidence to submit on reconsideration. He stated that the information demonstrated that the incident occurred on "January 11, 2008" and that it caused an injury. Appellant advised that he or his doctor's office could answer questions about the new information. No additional evidence accompanied the reconsideration request.

² The Office pointed out that appellant filed a previous compensation claim for a November 27, 2006 injury and the medical reports submitted appeared to relate more closely to that claim.

By decision dated November 16, 2009, the Office denied his reconsideration request on the grounds that it did not receive any legal argument or new and relevant evidence warranting a merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provide that the evidence or argument submitted by a claimant must either: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ Where the request for reconsideration fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

The Office's October 29, 2008 merit decision denied appellant's claim on the grounds that the medical evidence did not establish the January 11, 2007 incident caused or contributed to a traumatic injury.

Appellant requested reconsideration on October 28, 2009, noting that he obtained new evidence that demonstrated he sustained the incident and an injury on "January 11, 2008."⁶ This assertion did not contend that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.⁷ Although appellant maintained that he possessed new and pertinent evidence, he did not submit any evidence with his reconsideration request and the Office did not receive any new evidence before the issuance of its November 16, 2009 decision. Although appellant invited the Office to contact him or his physician with regard to the new evidence, it is appellant's burden to submit all supporting documents with his request for reconsideration.⁸

As appellant did not submit evidence or argument satisfying any of the three regulatory criteria for reopening a claim, the Office properly denied his application for reconsideration without reopening the claim for a review on the merits.

³ 5 U.S.C. § 8128(a). *See generally* 5 U.S.C. §§ 8101-8193.

⁴ *E.K.*, 61 ECAB ____ (Docket No. 09-1827, issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

⁵ *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

⁶ Appellant's statement that the claimed injury occurred on January 11, 2008 appears to be a typographical error as his January 11, 2007 traumatic injury claim form lists the claimed injury as occurring on January 11, 2007.

⁷ *See Charles A. Jackson*, 53 ECAB 671 (2002) at n.14; *Daniel O'Toole*, 1 ECAB 107 (1948) (request for reconsideration predicated on legal premise should contain at least an assertion of an adequate legal premise having some reasonable color of validity).

⁸ *See* 20 C.F.R. § 10.606(b).

On appeal, appellant argues that the medical evidence of record was sufficient to establish that he sustained a traumatic injury on January 11, 2007 and that the Office's October 29, 2008 merit decision was erroneous. The Board does not have jurisdiction over the merits of the case in this appeal. It only has jurisdiction to consider whether the Office properly denied further merit review of the claim based on the evidence that was before the Office at the time it issued the November 16, 2009 decision. As noted, appellant did not submit any evidence or argument in support of his reconsideration request that warranted reopening of his claim for a merit review under section 8128(a) of the Act.⁹

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ The Board notes that appellant submitted new medical evidence on appeal. As the Office did not consider this evidence in reaching its November 16, 2009 decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).